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ROBERT BARON DUFFY and ROBERT LOUIS GARY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ROBERT BARON DUFFY AND ROBERT
LOUIS GARY,

PLAINTIFFS,

vs.

FACEBOOK, INC, WAYNE HAWKINS,
JAMES SWENSON, AND DOES 1
THROUGH 10, INCLUSIVE,

DEFENDANTS.

Case No.:

COMPLAINT FOR DAMAGES

(1) Violation of Civil Rights Under 42
USC 1981

Jury Trial Demanded

1 **I. INTRODUCTION**

2 Robert Baron Duffy and Robert Louis Gary (collectively "Plaintiffs")
3 bring this action against Facebook, Inc. (hereafter "Facebook") under the
4 provisions of 42 U.S.C. 1981.

5 **II. BACKGROUND OF DISCRIMINATION AT FACEBOOK AND**
6 **SUMMARY OF CLAIMS**

7 1. Facebook is a multi-national employer, founded in 2004, with
8 some 14,500 employees, mostly within the United States. Its principal
9 function is providing information services. Facebook is known to have more
10 than one billion customers.

11 2. Recent statistics show that African-Americans are employed by
12 Facebook in numbers notably less than would be expected. In June 2016,
13 according to Facebook, only two percent of Facebook's U.S. employees are
14 African-American, while the percentage of African-Americans in leadership
15 positions was 3%. In comparison, African-Americans make up 12% of the
16 U.S. workforce.

17 3. Recent negative publicity about Facebook's treatment of women
18 and minority employees and its failure to hire qualified women and minority
19 employees has resulted in Facebook giving lip service to correcting its lack of
20 diversity. While Facebook has contended that it is seeking to address racial
21 diversity and discrimination issues, it has not followed through on these
22 stated commitments, as discussed in more detail below.

23 4. One glaring example of overt racial discrimination gone
24 unchecked took place beginning in 2012 in the small town of Forest City,
25 North Carolina. In 2012, Facebook built a Data Center Facility in Forest City,
26 and with the construction of this facility came the promise of jobs for the
27 citizens of this North Carolina area, which had been hit hard by loss of jobs
28 from the textile and related industries.

1 5. For over three years, Facebook allowed racial harassment and
2 discrimination against African-American employees to infect the working
3 conditions at Forest City, North Carolina.

4 6. The manager of Facebook's Forest City facility referred to
5 Facebook's African-American employees as "nigger" and "monkey." He
6 described one African-American employee as a "lazy nigger who wants
7 everything handed to him."

8 7. Facebook's managers in Menlo Park, California were made aware,
9 repeatedly, of acts of discrimination against the very few African-American
10 employees at the Forest City, North Carolina facility. Facebook failed to take
11 adequate steps to correct this racial discrimination. Facebook allowed and
12 continues to allow retaliation against the employees reporting discrimination
13 to fester and continue.

14 Plaintiffs allege as follows:

15 **PARTIES, JURISDICTION & VENUE**

16 8. Plaintiff Robert Baron Duffy (hereafter "Duffy") is a resident of
17 Rutherford County, North Carolina. Duffy is African-American. At all relevant
18 times, Plaintiff Duffy was employed by Facebook at its Forest City, North
19 Carolina facility. Upon information and belief, he was the only African-
20 American manager in the Facilities Operations organization.

21 9. Plaintiff Robert Louis Gary (hereafter "Gary") is a resident of
22 Rutherford County, North Carolina. Gary is African-American. Plaintiff Gary
23 is a current employee of Facebook at its Forest City, North Carolina facility.

24 10. Defendant Facebook has its principal place of business in Menlo
25 Park, California. At all relevant times Facebook has regularly conducted
26 business in California and North Carolina. Defendant Facebook is an employer
27 within the meaning of Title VII of the Civil Rights Act of 1964 and at all times
28 relevant to this Complaint has had in excess of 500 employees.

1 11. Defendant Wayne Hawkins was at relevant times the Facilities
2 Manager at the Forest City location, and then a Facilities Regional Operations
3 Manager until about August, 2015.

4 12. Defendant James Swenson is employed by Facebook and at
5 relevant times was acting as the Operations Manager at the Forest City, North
6 Carolina facility. He is presently the New Sites Startup Director.

7 13. The true names and capacities, whether individual, corporate or
8 otherwise, of Does 1 through 10 are at this time unknown to Plaintiff who
9 therefore sues said Defendants by such fictitious names. Plaintiff will ask
10 leave to amend this complaint to reflect their true names and capacities when
11 the same have been ascertained. Plaintiff is informed and believes, and
12 thereon alleges, that each of said Defendants is responsible, jointly and
13 severally, for the events and injuries described herein and caused damages
14 thereby as alleged herein.

15 **III. FULL FACTUAL STATEMENT**

16 *Mr. Gary is Paid Less Because of his Race.*

17 14. Plaintiff Robert Gary began working at the Forest City Facebook
18 facility in 2010. From 2010 until June, 2012, Mr. Gary was employed with
19 McKenny Contractors. Mr. Gary worked with sheet metal in the construction
20 of the new Facebook buildings known as FRC1 and FRC3.

21 15. From about July, 2012 to November, 2012, Mr. Gary worked for
22 Siemens Industry doing work at the Facebook Forest City facility. Upon
23 information and belief, Facebook functioned as a joint employer of Mr. Gary
24 at this time, and set the hours and working conditions for Siemens' employees
25 like Mr. Gary. In particular, Wayne Hawkins, then Forest City Facilities
26 Operations Manager, was Mr. Gary's manager. Upon information and belief,
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1 Mr. Hawkins had the authority to remove vendors and their employees from
2 the Facebook Forest City facility.

3 16. In November, 2012, Mr. Gary was hired by Facebook as a
4 Facilities Maintenance technician and paid \$20.05 per hour.

5 17. In December, 2012, Mr. Gary's first review was conducted and
6 he was given a raise of 21 cents per hour.

7 18. In or about June, 2013, Mr. Gary was told by Mr. Hawkins that
8 he was being promoted to Night Shift Engineer. This position required Mr.
9 Gary to work overnight every night he was assigned.

10 Mr. Hawkins did not mention what pay raise would result from the promotion,
11 so a few days later Mr. Gary emailed Mr. Hawkins asking if the position
12 promotion would include a raise.

13 19. Mr. Hawkins never responded to Gary's email asking about a
14 possible pay raise due to the promotion. Upon information and belief, Mr.
15 Hawkins told another employee, Stencil Quarles, that he was upset Mr. Gary
16 was asking about a raise.

17 20. Upon information and belief, at about the same time that Mr.
18 Gary was inquiring if he would receive a pay raise with the promotion to
19 Engineer, Mr. Hawkins told his subordinates that Mr. Gary was a "lazy nigger
20 who wants everything handed to him."

21 21. Mr. Gary met with Mr. Hawkins in or about late June, 2013, and
22 told him that he was not "all about the money" but just wanted to know
23 whether and what he would get as a raise with the new job. Mr. Hawkins'
24 response was that Mr. Gary would not see any money until he worked his full
25 six-month review cycle and received a good review.

26 22. In or about July, 2013, Matt Hamrick, who is Caucasian, became
27 Mr. Gary's supervisor and was given the title of Chief Engineer.

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1 23. Throughout the second half of 2013 and 2014, Facebook hired
2 several new white employees who were placed in the same position or
3 positions highly similar to that held by Mr. Gary. Upon information and belief,
4 each of these white employees was given substantially higher starting pay
5 than Mr. Gary was earning at the time the white employees were hired, in
6 spite of the fact that Mr. Gary had at that time over three years of experience
7 working at the Facebook facility.

8 24. Upon information and belief, these white employees were given
9 starting pay between \$22.00 and \$24.00 per hour.

10 25. In or about the first quarter of 2014, Mr. Gary was given a
11 disproportionately low raise, in spite of being given positive feedback on his
12 performance by both Mr. Hamrick and Mr. Hawkins. In fact, all of Mr. Gary's
13 written reviews for the relevant time periods were at least "meets
14 expectations." His review for the first two quarters of 2013 was "meets
15 expectations" and Mr. Gary's written reviews for the Q3 and Q4 2013, which
16 were provided to him in 2014, reflected that he met and exceeded
17 performance expectations. His review for the first two quarters of 2014 was
18 "exceeds expectations."

19 26. Other white employees similarly situated to Mr. Gary received far
20 higher raises in 2013 and 2014. Thus, for example, one similarly situated
21 Caucasian employee was given a raise of over \$6.00 per hour, while Mr.
22 Gary's raise was \$1.67 per hour. That white employee had not been hired
23 until on or about December 17, 2012, and was not placed into the position of
24 Night Shift Engineer until October, 2013, just four months before he was
25 given the raise. Moreover, at the time of his hiring, that white employee
26 lacked the skills, education, and experience to make him qualified for the
27 position of Night Shift Engineer, and thus Mr. Gary was asked to and did train
28 the white employee in the duties of the Night Shift Engineer position.

1 27. That same Caucasian employee was also promoted to IC Level
2 Two, in spite of being in the position of Engineer less than four months. IC
3 levels are a method of job classification used by Facebook for the purposes
4 of pay rates and promotions.

5 28. Conversely, Mr. Gary remained in the position of IC1 and was
6 denied placement in the IC2 position at that time.

7 29. Upon information and belief Mr. Gary and another African-
8 American employee, a Critical Facility Engineer, are the lowest paid persons
9 in the Facility and Mr. Gary and another African-American employee have
10 been the lowest paid employees since Mr. Gary's hire.

11 *Mr. Gary Complains of Race Discrimination.*

12 30. Once Mr. Gary learned in or about January, 2014 of his low and
13 discriminatory pay raise and denial of elevation in the IC levels, he pursued
14 through the Facebook chain of command complaints that he was wrongfully
15 denied raises and promotions.

16 31. Mr. Gary verbally complained about pay discrimination to Mr.
17 Hamrick in or about February, 2014.

18 32. Mr. Gary verbally complained about pay discrimination to Mr.
19 Hawkins in April, 2014, raising the disparate treatment in the raises between
20 him and the white employee he trained. Mr. Hawkins stated that the
21 Caucasian employee in question deserved the raise. When Mr. Gary
22 questioned how that employee could be promoted before the elapse of six
23 months, which was the usual time required before an employee could be
24 promoted, Mr. Hawkins stated that they counted his earlier experience, even
25 though that contravened established Facebook policies.

26 33. Mr. Gary also complained about pay discrimination to global
27 manager James Faconne in April, 2014. Mr. Faconne told him that he talked
28 to Mr. Hawkins about Mr. Gary's pay, asking if an adjustment needed to be

1 made, and Mr. Hawkins said things were "fine." Mr. Faconne told Mr. Gary
2 he had to take "no" for an answer sometimes.

3 34. On April 28, 2014, Mr. Gary sent a written complaint to Facebook
4 Human Resources in Menlo Park, California, and provided a copy to managers
5 within the Forest City Facility. In the complaint, Mr. Gary stated that he
6 believed that the pay disparities were based on race discrimination. He stated
7 "I'm in a situation where I feel like I have not been getting the same
8 treatment concerning compensation like the rest of the employees here that
9 are of a different race.....I hope you can look into this ASAP. I believe the
10 reason I have been treated this way is because I'm African American and they
11 never expected for me to say anything."

12 35. Facebook failed to properly and adequately investigate Mr. Gary's
13 complaint of pay discrimination based on race. On or about May 2, 2014,
14 Sandy Marciari of Facebook headquarters' Human Resources department
15 spoke with Mr. Gary. She gave Mr. Gary a finding of no discrimination.

16 36. On June 8, 2014, Mr. Gary sent an email to Ms. Marciari saying
17 he was not satisfied with the investigation, because she simply took Mr.
18 Hawkins' word. He stated that he felt it was not investigated thoroughly
19 enough, and all that she had said to him was that "there was no discrimination
20 issues found." He asked if there were other avenues to pursue. He contended
21 that he was the lowest paid Facilities department employee at the Forest City
22 facility, and that that should not be the case, and he stated that he was not
23 comfortable working with Mr. Hawkins or Mr. Hamrick because of the way he
24 had been treated. Mr. Gary stated his belief that their decisions were not
25 based on work performance but favoritism.

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1 *Mr. Duffy is Subjected to Race Discrimination by Mr. Hawkins.*

2 37. In January, 2014, Plaintiff Robert Duffy was hired by Facebook to
3 serve as Assistant Facility Manager at the Forest City, North Carolina facility,
4 reporting to Mr. Hawkins.

5 38. In or about May, 2014, after receiving complaints that Mr.
6 Hawkins had engaged in race discrimination against Mr. Gary, Facebook
7 promoted Mr. Hawkins to Facilities Operations Regional Manager. His region
8 included the Forest City facility, as well as facilities in Ashburn, Virginia and
9 Sweden.

10 39. In July, 2014, Mr. Duffy was promoted to Facilities Operations
11 Manager at Forest City. He served in this role for about eighteen months,
12 from July, 2014 to December, 2015

13 40. Mr. Duffy observed that following this promotion Mr. Hawkins
14 micromanaged him, but did not micromanage other Caucasian employees
15 who were similarly situated to Mr. Duffy. The micromanagement took several
16 forms.

17 41. For example, Mr. Hawkins persistently interfered with Mr. Duffy's
18 hiring processes.

19 42. Mr. Hawkins undermined Mr. Duffy's leadership and authority by
20 giving Mr. Duffy's direct reports instructions that were contrary to those given
21 by Mr. Duffy. Mr. Hawkins used intimidation to force employees to follow his
22 directions, even when they countermanded Mr. Duffy's directions.

23 43. Mr. Hawkins held meetings to which Mr. Duffy should have been
24 but was not invited.

25 44. Upon information and belief, Mr. Duffy was paid less than
26 similarly situated Caucasian employees.

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1 *Mr. Duffy and Mr. Gary Complain of Race Discrimination.*

2 45. On July 1, 2015 Forest City Facebook employee Brian Gill
3 provided a written statement to Mr. Duffy complaining about numerous
4 sexually and racially derogatory statements made to Mr. Gill or in Mr. Gill's
5 presence by Wayne Hawkins. Mr. Gill's statement included the following
6 information:

- 7 a. Mr. Gill heard Mr. Hawkins refer to Mr. Gary as a "lazy nigger that
8 wants everything handed to him";
- 9 b. Mr. Gill heard Mr. Hawkins refer to Mr. Duffy as a "nigger"; and
- 10 c. Mr. Gill heard Mr. Hawkins refer to Stencil Quarles, who is also
11 African-American, as a monkey, asking "how can a monkey be
12 allergic to fucking bananas...." (Mr. Quarles is known to be
13 allergic to bananas).

14 Mr. Gill concluded his statement by stating that "these again are only a few
15 of the things that have been said directly to me about other employees."

16 46. On or about June 30, 2015, Mr. Gary and Mr. Duffy reported Mr.
17 Hawkins' racist comments and provided Mr. Gills' statement to Facebook
18 Human Resources in Menlo Park, California.

19 47. On July 2, 2015, Mr. Duffy and Mr. Gary filed EEOC charges of
20 race discrimination. According to Facebook, these charges were received by
21 them on July 16 and 17.

22 48. On July 13, 2015, Mr. Duffy sent an email to Effren Bledsoe, of
23 Facebook Human Resources in Menlo Park, describing his stress and
24 discomfort as a result of the racially derogatory statements made about him
25 and others that "creates a discriminatory and/or harassing environment."

26 49. Mr. Duffy's email stated that he is having "difficulty attending
27 meetings with the accused," Mr. Hawkins, who was allowed to perform his
28 regular job duties and to attend meetings even during the investigation

1 period, and that Mr. Duffy thought Facebook would have taken precautions
2 to neutralize the environment while investigating.

3 50. At the end of July, 2015, Facebook human resources
4 representatives came to Forest City to investigate the allegations against Mr.
5 Hawkins. This trip to Forest City took place only after the EEOC sent Facebook
6 a letter enclosing the charges. These interviews took place on or about July
7 27 and 28th.

8 51. The investigation of and responses to the Gill statement
9 regarding racial and sexual epithets and harassment and the EEOC charges
10 of Mr. Duffy and Mr. Gary were deeply flawed. The investigation of the acts
11 of racial harassment committed by Mr. Hawkins was not prompt. The initial
12 complaints about Mr. Hawkins' conduct were made at least as early as April
13 28, 2014, when Mr. Gary sent a written complaint to Facebook Human
14 Resources in Menlo Park, California, and provided a copy to managers within
15 the Forest City Facility, explaining that he believed that the pay disparities he
16 outlined in detail were based on race discrimination.

17 52. Complaints about Mr. Hawkins open use of racial epithets—
18 including and referencing the Gill statement—were made at least as early as
19 June 30, 2015. Yet it was not until nearly a month after they were put on
20 notice of this conduct that onsite interviews were conducted by Facebook.
21 Moreover, Mr. Hawkins was still performing his job duties and attending
22 meetings at the Forest City facility throughout this time period.

23 53. Moreover, Facebook failed to take appropriate corrective action
24 in response to the complaints of Mr. Hawkins racist remarks. Upon
25 information and belief, other Facebook managers and employees knew about
26 Mr. Hawkins' racist statements and conduct long before July 2, 2015 and did
27 nothing. This failure to report by other managers and employees violates the
28 express terms of the Facebook discrimination policy, which states that

1 managers are required to report, and other employees are encouraged to
2 report, "any violation or suspected violation" of the policy.

3 54. Facebook's anti-harassment policy was not effective. No training
4 on the Facebook Code of Conduct and on diversity at the Forest City facility
5 took place until February, 2016, three years after the racially discriminatory
6 pay discrepancies against Mr. Gary began, and at least two years after Mr.
7 Hawkins freely and repeatedly referred to African Americans as "niggers" and
8 "monkeys."

9 *Mr. Duffy is Subjected to Retaliation.*

10 55. On July 27, 2015, less than three weeks after complaining to Mr.
11 Bledsoe and less than four weeks after filing his complaint of race
12 discrimination with Facebook Human resources, Mr. Duffy was sent an email
13 which stated that he would have to interview in the next few months for his
14 current job.

15 56. The email enclosed a new job description for Facilities Manager,
16 which was the same position and job duties as the position Mr. Duffy was
17 already performing. Upon information and belief, the re-interviewing process
18 was a sham—in fact some similarly situated Caucasian individuals who
19 worked under the same managers were allowed to retain their positions
20 without proving themselves in interviews. Upon information and belief, Mr.
21 Duffy's counterpart at the Data Center facility in Sweden, who is Caucasian
22 and who reported to the same manager that Mr. Duffy did, was able to retain
23 his position without interviewing for it again. Moreover, Mr. Duffy's
24 counterpart Randi Johnson, who is Caucasian, was prepared for her interview
25 by her participation in interview panels.

26 57. On or about August 5, 2015, Mr. Hawkins left Facebook. Within
27 two weeks, or about mid-August, 2015, Mr. James Swenson, then West
28 Regional Manager, began managing operations at the Forest City facility.

1 Upon information and belief, Mr. Swenson had a close relationship with Mr.
2 Hawkins. Within weeks of Mr. Hawkins departure from Facebook, Mr.
3 Hawkins was able to secure a position at the company at which Mr. Swenson
4 had worked just prior to being employed by Facebook.

5 58. Mr. Swenson discriminated and retaliated against Mr. Duffy. In
6 August, 2015, Mr. Swenson gave Mr. Duffy a performance review for the "Q3
7 2015 Performance Summary Cycle" that was worse than he had ever
8 previously received. While the overall rating given to Mr. Duffy was "meets
9 all expectations," the evaluation contained several unwarranted and unduly
10 harsh criticisms. At the time the evaluation was prepared, Mr. Swenson had
11 not worked closely with Mr. Duffy, and in fact barely knew him. The evaluation
12 was written just two weeks after Mr. Swenson became Mr. Duffy's supervisor.
13 The evaluation was written the way it was, with its unfounded negative
14 comments, for retaliatory reasons.

15 59. That retaliatory intent was confirmed by Anthony Bostwick, who
16 informed Mr. Duffy in January, 2016, that Mr. Swenson had told Mr. Bostwick
17 that "either you support me or Duffy—I recommend that you support me."

18 60. Mr. Duffy continued to inform Facebook's human resources
19 department in Menlo Park, California about the discriminatory and retaliatory
20 treatment he was receiving. For example, on August 11, 2015, Mr. Duffy
21 emailed Gary Edwards regarding the retaliation he was experiencing. Mr.
22 Duffy also emailed other managers in Menlo Park complaining of retaliation,
23 including having to re-interview for his position, and his belief that Facebook
24 would use the re-interview process to manage him out of his current position

25 61. On August 21, 2015, Mr. Duffy emailed Mr. Swenson, requesting
26 that his performance review to be revised, based on the fact that much of the
27 information in it apparently came from other unnamed parties, and was
28 otherwise flawed. Rather than taking Mr. Duffy's complaint seriously, Mr.

1 Swenson's response made clear that Mr. Duffy was not going to be treated
2 fairly at Facebook. Mr. Swenson contended that the evaluation was based on
3 his own perceptions, even though he simply had not been at the facility long
4 enough to fairly make the assessments he articulated.

5 62. It was not until October 22, 2015, two months later, that Mr.
6 Swenson first met with Mr. Duffy one-on-one to discuss the performance
7 review and Mr. Duffy's request for changes. Mr. Swenson refused to change
8 anything. Although most all of the performance evaluation's negative
9 comments came from statements of other employees, Mr. Swenson refused
10 to identify the alleged complainants or take any steps to resolve the alleged
11 problems with Mr. Duffy's performance.

12 63. On October 23, 2015, Mr. Duffy filed his second EEOC charge,
13 alleging retaliation. He referred to the performance evaluation which he
14 received in August, 2015.

15 64. As a result of this discriminatory and retaliatory performance
16 evaluation, and subsequent discriminatory and retaliatory performance
17 evaluations, Mr. Duffy did not receive bonus compensation that he should
18 have received.

19 65. In a November 9, 2015 email, Mr. Duffy withdrew from the
20 Facilities Manager re-application process, due to the "stress generated over
21 the last few months" and the fact that he did not "feel I have a fair chance of
22 being selected."

23 66. Following his email withdrawing from the reapplication process,
24 no one from Facebook Human Resources or any other department contacted
25 Mr. Duffy to determine why he had stated that he did not have a fair chance
26 of being selected, or to take any steps to assure that he would be treated
27 fairly.

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1 67. On December 7, 2015, Ashley Jenkins, the new Human Resources
2 representative assigned to the Forest City Facility, told Mr. Duffy that she
3 needed to meet with him every week. Upon information and belief, this
4 requirement of meeting weekly has not been imposed on anyone else.

5 68. On December 11, 2015, Mr. Duffy complained to human
6 resources that "name calling and defamation of character is out of control"
7 and had spilled over to contractors who had recently begun work on the
8 facility building, who were now labeling Mr. Duffy "racist." He reported false
9 statements made about him and asked that an investigation be conducted.
10 In May 2016 he was told that the investigation was over and he should not
11 have any more problems, but he was not told the results of the investigation
12 or how similar issues would be prevented going forward.

13 69. On or about December 15, 2015, a new Facility Operations
14 Manager, Jean Normandy, began working at the Forest City facility.

15 70. When Ms. Normandy was hired as Facility Operations Manager,
16 Mr. Duffy was demoted to the position of Chief Facility Engineer. Since
17 December, 2015, Mr. Duffy has reported to Ms. Normandy, who is Caucasian.

18 71. Additional acts of retaliation took place after Ms. Normandy was
19 placed in the position of Facilities Operations Manager. All six of Mr. Duffy's
20 reports were stripped from him. Moreover, he was kept out of the
21 performance evaluations of subordinate employees who had worked under
22 him for the prior year, an unusual step.

23 72. Ms. Normandy required Mr. Duffy to take a management class for
24 new managers, even though Mr. Duffy at the time had three years of
25 management experience. Ms. Normandy did not require similarly situated
26 Caucasian employees to attend a management class for new managers.

27 73. On October 21, 2016, Plaintiff Duffy was constructively
28 terminated from his employment at Facebook, due to intolerable working

1 conditions. Any reasonable person, subjected to the same working conditions
2 to which Mr. Duffy was subjected, would have resigned from employment.

3 *Discrimination and Retaliation Continue at Facebook's Forest City Facility.*

4 74. IC level manipulation with adverse affects on African Americans
5 continued from 2013 until early 2016.

6 75. Pay discrimination against Mr. Gary and other African American
7 employees continues. Mr. Gary was wrongfully denied timely step increases
8 to IC2 and IC3 and wrongfully denied pay increases which were given to other
9 similarly situated employees. His pay has consistently lagged behind white
10 employees who are similarly situated.

11 76. Mr. Gary continues to earn less than similarly situated Caucasian
12 employees, even those hired in the last twelve months. Mr. Gary was finally
13 promoted to IC3 on February 22, 2016, far later than his peers' promotions
14 to this IC level

15 77. Since July, 2013, Mr. Gary has been performing the job of Facility
16 Engineer, yet he was not made an IC3 until February, 2016. In contrast, a
17 new Caucasian Facility Engineer was hired on November 30, 2015. That
18 Caucasian employee started out at the IC3 level and with a starting pay of
19 approximately \$70,000 dollars per year, yet Mr. Gary's starting pay was less
20 than \$50,000.00 per year

21 78. Moreover other acts of race discrimination, especially in hiring,
22 occurred during 2014 and 2015 that were not addressed effectively by
23 Facebook. For example, Carlos Gary, who is African-American, was hired as
24 an intern. After his hire in this temporary position, Mr. Hawkins set up
25 roadblocks to his hire as a permanent employee. On or about August 28,
26 2015, Carlos Gary was denied a permanent position and his employment was
27 terminated. Facebook said that this was because it was not hiring interns,
28 yet other interns, who were Caucasian, were hired.

1 79. Mr. Gary and Mr. Duffy each filed a charge of discrimination in
2 July, 2015. Mr. Duffy filed his second charge on or about October 23, 2015,
3 No. 430-2016-00086, alleging that due to his reports of harassment and
4 discrimination he had been retaliated against by Facebook by being given his
5 first negative performance evaluation in August, 2015. He filed a third charge
6 (430-2016-00953) regarding his Demotion on February 22, 2016, alleging
7 race and retaliation, and a fourth charge (430-2016-01086) on February 29
8 regarding his second negative performance review. All charges are pending.

9 **IV. LEGAL CLAIMS**

10 **Plaintiffs' First Cause of Action**

11 ***Violation of Civil Rights Under 42 USC 1981***

12 80. The allegations contained in the above paragraphs are
13 incorporated by reference herein.

14 81. Defendants have intentionally discriminated against Plaintiffs in
15 violation of Section 1981 by (1) denying promotions to Plaintiff Gary and
16 Plaintiff Duffy in whole or in part on the basis of race; (2) denying Plaintiff
17 Gary pay equal to similarly situated white employees, in whole or in part on
18 the basis of race, (3) harassing Plaintiffs, (4) allowing a work environment
19 hostile to African-Americans to fester at the Forest City Facebook facility (4)
20 retaliating against Plaintiff Duffy by demoting him from the position of
21 Facilities Operations Manager, (5) constructively discharging Plaintiff Duffy
22 and (5) denying Plaintiffs equal terms and conditions of employment in whole
23 or in part on the basis of race.

24 82. As a proximate and foreseeable result of Defendants' conduct,
25 Plaintiffs have suffered lost wages and benefits, suffered emotional distress,
26 mental anguish, stress, anxiety, embarrassment, humiliation, and their peace
27 of mind has been disturbed.

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83. As a proximate result of Defendants' wrongful conduct, Plaintiffs have suffered lost income, emotional distress, anxiety, humiliation, expenses, and other damages in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), and are entitled to recover compensatory damages in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00).

84. Defendants' actions were done maliciously, willfully or wantonly, or in a manner that demonstrates a reckless disregard for Plaintiff's rights. As a result of Defendants' conduct, Plaintiffs are entitled to recover punitive damages in an amount in excess of \$25,000.00.

V. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray the Court to:

A. Enter a judgment against Defendants for declaratory relief regarding the unlawful and unconstitutional acts and practices of Defendants;

B. Order Defendants to pay Plaintiffs compensatory damages in excess of Twenty Five Thousand Dollars (\$25,000.00),

C. Award Plaintiffs all reasonable costs and attorneys' fees incurred in connection with this action;

D. Award Plaintiffs such other and further equitable relief as the Court deems appropriate under the circumstances;

E. Grant the Plaintiffs a trial of this matter by a jury.

DATED: November 22, 2016

MINNIS & SMALLETS LLP

by: /s/ Sonya L. Smallets
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